

§ 2902.4

7 CFR Ch. XXIX (1–1–06 Edition)

agencies as a whole rather than to agency subgroups such as regional offices or subagencies of a larger Federal department or agency.

(b) *Exception for procurements subject to EPA regulations under the Solid Waste Disposal Act.* For any procurement by any Federal agency that is subject to regulations of the Administrator of the Environmental Protection Agency under section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (40 CFR part 247), these guidelines do not apply to the extent that the requirements of this part are inconsistent with such regulations.

(c) *Procuring items composed of highest percentage of biobased products.* FSRIA section 9002(c)(1) requires Federal agencies to procure designated items composed of the highest percentage of biobased products practicable, consistent with maintaining a satisfactory level of competition, considering these guidelines. Federal agencies may decide not to procure such items if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.

§ 2902.4 Procurement programs.

(a) *Integration into the Federal procurement framework.* The Office of Federal Procurement Policy, in cooperation with USDA, has the responsibility to coordinate this policy's implementation in the Federal procurement regulations. These guidelines are not intended to address full implementation of these requirements into the Federal procurement framework. This will be accomplished through revisions to the Federal Acquisition Regulation.

(b) *Federal agency preferred procurement programs.* (1) On or before January 11, 2006, each Federal agency shall develop a procurement program which will assure that items composed of biobased products will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement laws. Each procurement program shall contain:

- (i) A preference program for purchasing designated items,
- (ii) A promotion program to promote the preference program; and

(iii) Provisions for the annual review and monitoring of the effectiveness of the procurement program.

(2) In developing the preference program, Federal agencies shall adopt one of the following options, or a substantially equivalent alternative, as part of the procurement program:

(i) A policy of awarding contracts to the vendor offering a designated item composed of the highest percentage of biobased product practicable except when such items:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards set forth in the applicable specifications, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(ii) A policy of setting minimum biobased products content specifications in such a way as to assure that the biobased products content required is consistent with section 9002 of FSRIA and the requirements of the guidelines in this part except when such items:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(c) *Procurement specifications.* After the publication date of each designated item, Federal agencies that have the responsibility for drafting or reviewing specifications for items procured by Federal agencies shall ensure within a specified time frame that their specifications require the use of designated items composed of biobased products, consistent with the guidelines in this part. USDA will specify the allowable time frame in each designation rule. The biobased content of a designated item may vary considerably from product to product based on the mix of ingredients used in its manufacture. In procuring designated items, the percentage of biobased product content should be maximized, consistent with achieving the desired performance for the product.